

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

ROBERT T. WARTERFIELD, #1829999

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:17cv330

**ORDER ADOPTING INITIAL REPORT AND RECOMMENDATION**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak. The Magistrate Judge issued an Initial Report and Recommendation (Dkt. #27), which contains proposed findings of fact and recommendations for the disposition of Petitioner's motion for injunctive relief (Dkt. #22). Petitioner filed objections (Dkt. #29).

In his motion for injunctive relief, which was construed as a petition for writ of mandamus, Petitioner asks the Court to order the State to perform contractual obligations owed to him and release him from custody. In his objections to the Report, Petitioner complains that his motion should not have been construed as a petition for writ of mandamus. The Magistrate Judge was correct in her assessment, however, in that the relief Petitioner seeks would be considered mandamus relief. The Court also notes that Petitioner's motion for injunctive relief seeks the same relief as that sought in the underlying habeas action. The proper procedure for seeking correction of a judgment is outlined in the *Rules Governing Section 2254 Cases in the United States District Courts*. The Court will consider Petitioner's § 2254 petition as soon as possible.

Further, Petitioner files a motion for certificate of appealability (Dkt. #30). Rule 11(a) of the *Rules Governing Section 2254 Cases in the United States District Courts* provides that the district

court must issue or deny a certificate of appealability when it enters the final order adverse to the applicant. Final Judgment has not yet been issued in this case; thus, Petitioner's motion is premature.

Having made a *de novo* review of Petitioner's objections and found them to be without merit, the Court concludes that the findings and conclusions in the Initial Report and Recommendation are correct, and adopts the same as the findings and conclusions of this Court. It is therefore

**ORDERED** that Petitioner's motion for injunctive relief (Dkt. #22) is **DENIED**. It is further **ORDERED** that Petitioner's motion for certificate of appealability (Dkt. #30) is **DENIED**.

**SIGNED this 12th day of September, 2018.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE